

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND QUALITY DIVISION**

SETTLEMENT AGREEMENT

The Wyoming Department of Environmental Quality, Land Quality Division (WDEQ/LQD) and Johnson County Road and Bridge, a local government entity authorized to perform mining activities in Wyoming, enter into this Settlement Agreement to fully and finally resolve without litigation the violations alleged in **Notice of Violation (NOV) Docket Number 4389-08, dated November 5, 2008**. The Notice of Violation (NOV) alleges that Johnson County Road and Bridge removed topsoil from the BLM-Rome Hill Pit to reclaim the Esponda Pit without written authorization from the Wyoming Department of Environmental Quality, Land Quality Division (LQD), Administrator. The site of these violations is located in Section 33, Township 47 North, Range 85 West. This is a violation of the Wyoming Environmental Quality Act (Act) and applicable Wyoming Department of Environmental Quality/Land Quality Non-Coal Rules and Regulations (WDEQ/LQD NC R&R).

W.S. §35-11-901(a)(ii) authorizes the WDEQ to negotiate a stipulated settlement, including payment of a penalty, in lieu of litigation. To that end, Johnson County Road and Bridge, and the WDEQ/LQD hereby stipulate and agree as follows:

1. The WDEQ, pursuant to W.S. §35-11-104, is a department in the executive branch of the state government of Wyoming and is principally situated in Cheyenne, Wyoming. DEQ is the agency with the responsibility for administering the Wyoming Environmental Quality Act including all provisions of the WDEQ/LQD R&R.
2. Johnson County Road and Bridge is the operator of a sand and gravel mining operation located in Johnson County, Wyoming, in Section 33, Township 47 North, Range 85 West. As part of its operation, Johnson County Road and Bridge mines mineral from this site for use to maintain Johnson County roads and facilities.
3. Removal of topsoil from a mining operation is a violation of the Wyoming Department of Environmental Quality, Land Quality Division, Noncoal Rules and Regulations, Chapter 3, Section 2(c)(i)(A). The topsoil must be segregated as not to become mixed with spoil or waste materials, must be stockpiled, and must be saved for reclamation purposes.
4. Removal of topsoil from a mining operation without Administrator approval is a violation of the Wyoming Department of Environmental Quality, Land Quality Division, Noncoal Rules and Regulations, Chapter 3, Section 2(c)(i)(F).
5. Johnson County Road and Bridge must obtain LQD Administrator approval for the removal of topsoil from the BLM-Rome Hill Pit for use to reclaim the Esponda Pit by no later than December 15, 2008.
6. Johnson County Road and Bridge must replace topsoil removed from the BLM-Rome Hill Pit in equal volume to be used in reclamation of the BLM-Rome Hill Pit by December 15, 2008.
7. If Johnson County Road and Bridge does not complete items 5 and 6 of this Settlement Agreement by December 15, 2008, Johnson County Road and Bridge agrees to pay a total penalty of Five Hundred Dollars (\$500.00), for the violations stated in Items 3 and 4. Johnson County Road and Bridge shall pay \$500.00 directly to the WDEQ/LQD on December 15, 2008. Payment to WDEQ/LQD shall be by check made payable to the Wyoming Department of Environmental Quality/Land Quality Division and shall be sent to: Donald R. McKenzie, Administrator, Wyoming Department of Environmental Quality, Land Quality Division, Herschler Building, 3 Floor-West, 122 West 25th Street, Cheyenne, Wyoming 82002.
8. This signed Settlement Agreement and payment by Johnson County Road and Bridge as specified above shall constitute full satisfaction for and resolution of all claims by the WDEQ/LQD against Johnson County Road and Bridge, based on the violations alleged in Notice of Violation Docket No. 4389-08. Contingent upon Johnson County Road and Bridge compliance with the terms of this Settlement Agreement, the WDEQ/LQD will refrain from taking further enforcement action against Johnson County Road and Bridge, for these particular violations cited in this Settlement Agreement. By this Settlement Agreement, the parties intend to resolve with prejudice all allegations that were asserted in NOV Docket No. 4389-08.
9. Johnson County Road and Bridge waives any statute of limitations which may apply to an enforcement action by the WDEQ/LQD involving the specific matters described in Notice of Violation Docket No. 4389-08.

10. Nothing in this agreement precludes WDEQ/LQD from taking additional enforcement action, including the issuance of a Notice of Violation, Order and/or pursuing additional penalties, should Johnson County Road and Bridge violate the Wyoming Environmental Quality Act or applicable rules and regulations in the future.
11. This Settlement Agreement shall be admissible by either party without objection by the other party in any subsequent action between these parties.
12. Notwithstanding any other language in this Settlement Agreement, the State of Wyoming and WDEQ do not waive sovereign immunity by entering into this Settlement Agreement with Johnson County Road and Bridge and specifically retain all immunity and all defenses available as sovereigns under state and federal law.
13. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.
14. **This Settlement Agreement is binding upon Johnson County Road and Bridge, its successors and assigns, and upon the WDEQ.**
15. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

FOR: Johnson County Road and Bridge

Signed: Scott Behring

Date: 11-25-08

Typed: Scott Behring

Title: Supervisor

FOR: The Wyoming Department of Environmental Quality

John V. Corra
John V. Corra, Director
WDEQ

Date: 12/01/08

Donald R. McKenzie
Donald R. McKenzie, Administrator
WDEQ/Land Quality Division

Date: 11-28-08

JVC/RAC/DS

cc: Mark Rogaczewski, WDEQ/LQD, District III
Docket Number 4389-08